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DEPARTMENT OF COMMERCE

International Trade Administration

(A-549-821)

Polyethylene Retail Carrier Bags from Thailand: Final Court Decision and Amended Final Results of Administrative Review of the Antidumping Duty Order; 2006-2007

AGENCY: Enforcement and Compliance, formerly Import Administration, International Trade Administration, Department of Commerce

SUMMARY: On January 18, 2012, the Court of International Trade (CIT) entered judgment in *KYD Inc. v. United States*, 807 F. Supp. 2d 1372 (CIT January 18, 2012) (*KYD v. United States*) affirming the Department's results of redetermination pursuant to remand, which recalculated the weighted-average duty margin for polyethylene retail carrier bags (PRCBs) from Thailand produced or exported by King Pac Industrial Co., Ltd. (King Pac) and Master Packaging Co., Ltd. (Master Packaging) and imported by KYD Inc. (KYD) for the period of review (POR) of August 1, 2006, through July 31, 2007, to be 94.62 percent. KYD appealed the CIT's decision to the Court of Appeals for the Federal Circuit (CAFC). On May 29, 2013, the CAFC affirmed the judgment of the CIT.¹ The time for appeal has expired. Accordingly, the Department is amending the final results of the administrative review of the antidumping duty order on PRCBs from Thailand covering the POR, in accordance with *KYD v. United States*.

EFFECTIVE DATE: (Insert date of publication in the *Federal Register*.)

FOR FURTHER INFORMATION CONTACT: Thomas Schauer or Minoo Hatten, AD/CVD Operations, Office I, Enforcement and Compliance, International Trade Administration, U.S.

¹ See *KYD Inc. v. United States*, Nos. 2012-1533 and 1534, 2013 U.S. App. LEXIS 11984 (Fed. Cir. May 29, 2013) (affirming the CIT's judgment without opinion, in accordance with Rule 36 of the CAFC's Rules of Practice).

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SUPPLEMENTARY INFORMATION:

Background

On January 15, 2009, the Department published the final results of the administrative review of the antidumping duty order on PRCBs from Thailand.² KYD challenged the Department's selection of adverse facts available applied to subject merchandise produced or exported by King Pac and Master Packaging at the CIT.

On April 28, 2011, the CIT remanded for reconsideration, the selected adverse facts available rate specifically applied to merchandise both produced or exported by King Pac and Master Packaging *and* imported by KYD.³ On remand, the Department revisited its selection of an adverse facts available rate applied to merchandise produced or exported by King Pac and Master Packaging and imported by KYD, applying a rate of 94.62 percent.⁴ The CIT affirmed the Department's Final Remand Results on January 18, 2012.⁵ The CIT subsequently denied KYD's motion for reconsideration.⁶ Upon appeal, the CAFC affirmed the Department's Final Remand Results on May 29, 2013. KYD did not appeal the CAFC's judgment.

Amended Final Results

As the time period for appealing the CAFC's affirmation of the CIT's judgment has expired, the litigation is final and conclusive in this proceeding. Pursuant to section 516A(e) of the Tariff Act of 1930, as amended, we are, therefore, amending our final results of review

² See *Polyethylene Retail Carrier Bags from Thailand: Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 74 FR 2511 (January 15, 2009) (*Final Results*).

³ See *KYD Inc. v. United States*, 779 F. Supp. 2d 1361 (CIT April 28, 2011).

⁴ See "Final Results of Redetermination Pursuant to Remand, *KYD Inc. v. United States*, Court No. 09-00034, Slip Op. 11-49" (August 16, 2011) (*Final Remand Results*).

⁵ See *KYD v. United States*, 807 F. Supp. 2d at 1378.

⁶ See *KYD Inc. v. United States*, 836 F. Supp. 2d 1410 (CIT May 8, 2012).

covering the POR August 1, 2006, through July 31, 2007, to reflect the findings of the remand redetermination affirmed in *KYD v. United States*.

Accordingly, the Department will determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all subject merchandise *both* produced or exported by King Pac and Master Packaging *and* imported by KYD for the period August 1, 2006, through July 31, 2007, at the rate of 94.62 percent, in accordance with these amended final results.⁷ The Department intends to issue liquidation instructions to CBP 15 days after publication of these amended final results in the *Federal Register*.

Cash Deposit Requirements

The CIT held in its April 28, 2011, judgment, which remanded the *Final Results* to the Department, that the legal question at issue in this litigation pertained only to entries imported by KYD during the POR and did not pertain to “future entries whatsoever.”⁸ Accordingly, in the Final Remand Results, the Department applied the 94.62 percent rate “only to the assessment of antidumping duties on entries of subject merchandise produced and/or exported by King Pac or Master Packaging and imported by KYD during the period of review.”⁹ Because the CIT affirmed the Final Remand Results in *KYD v. United States*, no modification to the Department’s cash deposit instructions is necessary in this case.

⁷ Subsequent to the CIT’s affirmance of the Department’s remand redetermination, no administrative review was requested pursuant to 19 CFR 351.213(b) during the applicable anniversary months for entries of subject merchandise produced or exported by King Pac and Master Packaging and imported by KYD.

⁸ See *KYD Inc. v. United States*, 779 F. Supp. 2d at 1372.

⁹ See Final Remand Results, at 21.

Notification

We are issuing and publishing these amended final results of administrative review in accordance with sections 751(a)(1) and 777(i) of the Tariff Act of 1930, as amended.

Ronald K. Lorentzen
Acting Assistant Secretary
for Enforcement and Compliance

Dated: November 15, 2013

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